BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Southern Union Company d/b/a Missouri Gas Energy, The Laclede Group, Inc. and Laclede Gas Company for an Order Authorizing Sale, Transfer, and Assignment of Certain Assets and Liabilities from Southern Union Company to Laclede Gas Company and, in Connection Therewith, Certain other Related Transactions	))))))))	Case No. GM-2013-0254

MOTION FOR RECONSIDERATION AND RESPONSE OF SOUTHERN UNION COMPANY IN OPPOSITION TO APPLICATION OF MISSOURI INDUSTRIAL ENERGY CONSUMERS TO INTERVENE OUT OF TIME

COMES NOW Applicant Southern Union Company d/b/a Missouri Gas Energy ("SUG"), pursuant to 4 CSR 240-2.075 and 4 CSR 240-2.080 and for its Motion for Reconsideration and Response in Opposition to the Application to Intervene Out of Time of the Missouri Industrial Energy Consumers respectfully states as follows to the Missouri Public Service Commission ("Commission"):

1. On January 14, 2013, SUG, the Laclede Group, Inc., and Laclede Gas Company ("Laclede Gas") filed a Joint Application for authorization for Laclede Gas to acquire all of the regulated assets of SUG's Missouri Gas Energy ("MGE") Division. The Joint Application was accompanied by the prepared direct testimony of several supporting witnesses.

2. On the following day, the Commission issued an Order Directing Notice and Establishing Intervention Date ("Order") pursuant to which the Commission established February 13, 2013, as the deadline for parties to intervene in the case.

3. Pursuant to the Commission's Order, several parties, including United Steel Workers District 11, Missouri Department of Natural Resources, Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, the City of Kansas City and the

Missouri Gas Users Association filed timely applications to intervene which were granted by the Commission. IBEW Local 53 filed an application to intervene four days after the intervention deadline, which SUG did not oppose.

4. On May 21, 2013, the MIEC filed an Application to Intervene Out of Time ("Application"). This pleading was filed over three (3) months after the intervention deadline established by the Commission. On the following day, without having allowed any meaningful opportunity for other parties to respond to the Application, the Commission's regulatory law judge issued an order granting the Application.[1] This order cannot be explained in light of the fact that the Application does not come close to complying with the requirements of Commission rule 4 CSR 240-2.080(16) governing requests for expedited consideration. In any event, the order granting the Application should be reconsidered.

5. 4 CSR 240-2.175(5) states that: "[a]pplications to intervene filed after the intervention date may be granted upon the showing of good cause." MIEC claims that it is a party to the pending Laclede Gas rate case (File No. GR-2013-0171) and that there are issues in the rate case "related to" this case and that it will be foreclosed from addressing the rate case issues unless it is permitted to intervene in this case. Finally, MIEC cryptically asserts that allowing it to intervene in this case will assist with its resolution. These assertions are not "good cause" to grant the Application to Intervene. To the contrary, some of MIEC's statements are self-contradictory. Other MIEC statements are nonsensical. And one barely qualifies as a half-truth.

6. This case is not a rate case or a complaint case where a revenue requirement or

[1] The regulatory law judge likely concluded that no party would oppose this application on the basis of the MIEC's representation that one of the Joint Applicants, Laclede Gas, did not object. *See*, Application ¶4. Counsel for the MIEC failed to inform the Commission that Jim Swearengen, counsel for the seller in the proposed transaction, had informed counsel for MIEC that SUG would oppose MIEC's intervention. The MIEC statement can only be viewed as a half-truth or misrepresentation by omission and is a very serious matter.

allocation of costs among the rate classes is at issue. If MIEC wants its rate case issues addressed by the Commission, the venue for doing so is in the Laclede Gas rate case in which MIEC is "actively engaged" in settlement discussions. (Application ¶3) Otherwise, the MIEC should be tasked to explain how it could be aggrieved by a likely settlement of the Laclede Gas rate case in which the MIEC presumably would join, concur or not oppose.

7. The MIEC cannot make the showing required under Commission rule 4 CSR 240-2.075(4)(A) that its interest in this case differs from that of the general public because the MIEC's interest does not differ from that of the general public. The general public shares the MIEC's interest in insuring that the proposed transaction is not detrimental to the public interest, the applicable legal standard in this case.[2]

8. Significantly, the MIEC does not claim that it was not aware of the Joint Application in this case. Any such claim would not be plausible. Laclede Gas' proposed acquisition of Southern Union Company's MGE operations has been widely publicized in the St. Louis press, including the St. Louis Post-Dispatch. The salient fact is that MIEC chose not to timely intervene. This informed choice directly contradicts its belated claim that the decision in this case may adversely affect its interests. (Application ¶2)

7. Finally, MIEC claims that granting the proposed intervention will serve the public interest by "assisting the Commission's record for decision".[3] This claim is undermined by its statement in the immediately preceding paragraph that it "does not yet have a position on the issues". What record can the MIEC "assist" in developing if it does not know what its position on the issue is yet? In any event, the Commission's Staff, the Office of the Public Counsel, and the numerous other parties to this case are perfectly capable of making record that is sufficient for the

[2] *See*, Joint Application, ¶ 20.
[3] Application ¶6.

Commission to determine whether or not the proposed transaction will cause a public detriment.[4] The participation of the MIEC is not essential for this purpose.

8. The MIEC asserts, again in cryptic fashion, that there will be no prejudice if it is allowed to intervene, but this is not so.[5] Although no procedural schedule has been established in this case, much has occurred and much effort has been expended over the four months the Joint Application has been on file. Many data requests have been generated and responded to. There have been numerous inclusive discussions and a number of detailed presentations by the Joint Applicants concerning important aspects of the proposed transaction. All of these have been calculated to fully inform the parties and to seek input about concerns they may have, all to facilitate a possible settlement having meaningful conditions. To date, no issues have been raised which would cause the Joint Applicants to believe that there are any likely "deal stoppers". To allow the MIEC to intervene at this delicate stage of the process, to begin discovery from scratch and to bring up what it admits would be new and unique topics which should have been addressed in the Laclede Gas rate case likely would result in unnecessary and unjustified delays.

9. The MIEC is not new to the Commission proceedings or its rules of practice. The lack of interest evidenced by the MIEC speaks for itself. It is a group of sophisticated corporate interests represented by one of the largest law firms in the State of Missouri. It can be presumed that its members were able to assess their interests and that they made an informed decision that they had no compelling interest in this case. Their non-action for the four (4) months since the Joint Application was filed is an admission of that fact. Also, being late to the table is nothing new for the MIEC. A similar dilatory tactic was attempted by MIEC earlier this year in

[4] The MIEC states that the Commission's "decision regarding capital structure" is of interest (Application ¶2), but the Commission can be certain that its staff will examine that topic with great care and present an assessment for consideration.

[5] Application ¶6.

consolidated Case Nos. EO-2012-0135 and EO-2012-0136. In that case, the Commission denied MIEC's application to intervene out of time for failing to state sufficient good cause.[6] The Commission should do likewise in this case.

10. If the Commission's intervention deadlines are to have any meaning, big corporate interests with notice such as are represented by the MIEC must not be permitted to intervene substantially out of time without a compelling showing of circumstances which justifies extraordinary relief. Otherwise, no incentive exists for an applicant claiming to have an interest in the proceeding to comply with the Commission order.

11. In light of the fact that the regulatory law judge in this case granted the Application without having provided any reasonable opportunity for SUG to respond, SUG requests that the matter be reconsidered. In the circumstances, SUG requests that the ruling be referred to the Commission for an independent determination on the merits of the Application.

WHEREFORE, the matter should be reconsidered by the full Commission and the late-filed application of the MIEC to intervene should be denied for failure to state good cause for special treatment.

Respectfully submitted,

/s/ **Todd J. Jacobs**
Todd J. Jacobs, MBE #52366
Senior Director- Legal
Southern Union Company d/b/a Missouri Gas Energy
3420 Broadway
Kansas City, MO 64111
816-360-5976
816-360-5903 (fax)
todd.jacobs@sug.com

ATTORNEY FOR SOUTHERN UNION COMPANY d/b/a MISSOURI GAS ENERGY

[6] *See*, Order Denying Application to Intervene, February 27, 2013.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent to counsel of record via electronic mail on this 22nd day of May 2013.

/s/

_____

Todd J. Jacobs